



*The Commonwealth of Massachusetts*

*The Alcoholic Beverages Control Commission*

*Leverett Sullivan Hall Building, Government Center*

*100 Cambridge Street, Boston 02202*

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ANNUAL REPORT

Fiscal Year 1988

George R. McCarthy, Chairman  
Eunice P. Howe, Associate Commissioner  
Daniel P. Matthews, Associate Commissioner  
Peter J. Connelly, Executive Secretary

June 30, 1988

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*The Commonwealth of Massachusetts*

*The Alcoholic Beverages Control Commission*

*Levett Saltonstall Building, Government Center*

*100 Cambridge Street, Boston 0202*

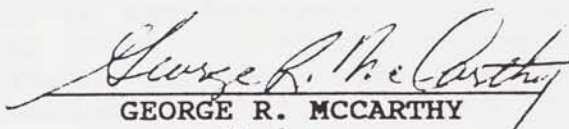
TELEPHONE: 727-3040

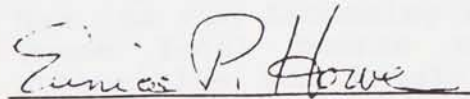
**MEMORANDUM**


TO: Secretary Paula Gold  
FROM: George R. McCarthy  
SUBJECT: Annual Report

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Herewith delivered is the Alcoholic Beverages Control Commission's Annual Report for the Fiscal Year ending June 30, 1988.

  
GEORGE R. MCCARTHY  
Chairman

  
EUNICE P. HOWE  
Associate Commissioner

  
DANIEL P. MATTHEWS  
Associate Commissioner

## ABCC DUTIES AND FUNCTIONS

In accordance with the provisions of Massachusetts General Laws, Chapter 6, Section 44, the Alcoholic Beverages Control Commission files herewith the report of its action and of the conduct and condition of traffic in alcoholic beverages in the Commonwealth for the Fiscal Year ending June 30, 1988.

The Alcoholic Beverages Control Commission (hereinafter referred to as the Commission or ABCC) was created in 1933 by M.G.L. C.6, s43. The Commission has the general supervision of the conduct of the business of manufacturing, importing, exporting, storing, transporting and selling alcoholic beverages. Further, it supervises the quality, purity and alcoholic content thereof by virtue of M.G.L. C.6, s 44. The Commission is comprised of a Chairman and two Associate Commissioners. The present Chairman is George R. McCarthy and the Associate Commissioners are Eunice P. Howe and Daniel P. Matthews.

The Commission sets policy and standards and advises local Licensing Authorities; the Commission sits as a quasi-judicial body, hearing appeals from local boards, protests and violations of the Liquor Control Act (Chapter 138) and conducts public hearings. The Commission also keeps track of Bottle Bill revenues.

The offices of the Commission are located at 100 Cambridge Street, Boston, on the 22nd floor.

### ADMINISTRATIVE SECTION

The ABCC is the sole issuing authority for alcoholic beverage licenses to manufacturers (distillers, brewers, farmer breweries, farmer wineries, etc.), wholesalers and importers, rectifiers, railroads, airlines, steamships and ship chandlers. It is the sole issuing authority of liquor transportation permits for express or trucking companies, steamships, railroads, airlines and liquor retailers. It licenses salespersons employed by manufacturers, wholesalers and importers.

Massachusetts has a two-tiered system for liquor licensing. Each city or town which has voted to permit the sale of alcoholic beverages (only 21 of the state's 351 cities and towns are "dry") has its own Licensing Board, Commission or Licensing Authority. These local boards or commissions are the sole licensing authorities for hotels, restaurants, clubs and package stores within their communities. While the local licensing authorities do the actual issuing, the license must be approved by the ABCC.

During Fiscal year 1988, the Commission issued approximately 14,000 permits and licenses. It also processed applications for



licenses and license changes (transfers of license or stock, pledges of licenses or stock, changes of managers or officers, etc.) which are forwarded from the local licensing authorities.

Each of these involves a review for compliance with statutes and regulations, cross checking with the Department of Revenue for compliance with the tax laws of the Commonwealth and considerable contact with licensees, applicants, their agents and attorneys and the Local Licensing Authorities.

The Commission has kept track of the revenues from the Bottle Bill since its 1983 inception as well as the money retained by all bottlers and distributors from the unreturned containers.

A significant function of the staff is responding to numerous telephone and written inquiries from local licensing boards, government agencies, licensees, attorneys, applicants and the general public concerning the status of applications, procedures for obtaining licenses and appealing decisions, state and local laws and regulations, public policy and matters of a technical and general nature.

#### INVESTIGATORY SECTION

The ABCC's Investigatory Staff are designated as "Special Assistants to the Commission". They are charged with assuring that those involved in the alcoholic beverage industry comply with Massachusetts law and ABCC rules and regulations. To insure compliance, they investigate complaints and make frequent on-site visits to, and inspections of, retailer and wholesaler/importer premises. Investigators interview license applicants, investigate their financial status and check their corporate and police records, if any. They are required to visit newly-licensed establishments to insure the premises comply with applicable statutes and codes.

Licensed establishments are inspected on a regular basis. When apparent violations are found, a report is submitted to the Commission, a formal hearing is conducted and the matter is adjudicated. Investigators are required to prepare the evidence and prosecute their cases before the Commission. From time to time, the investigators carry out special orders of the Commission and assist other law enforcement agencies and local licensing authorities.

#### HEARINGS

During Fiscal Year 1988, the Commission heard 429 cases in its formal hearings (See statistical analysis). Hearings are open to the public and written decisions are rendered. decisions are kept on file with the Agency and with the Social Law Library at

Suffolk County Courthouse in Boston. They are also reported monthly in the Massachusetts Beverage Journal and The Price Book, and other publications distributed to licensees.

Commission decisions concern matters of public interest and are often reported in the mass media. The Commission encourages wide dissemination of its decisions as this puts licensees on notice that compliance with the laws and regulations is expected. Decisions also furnish guidelines to the industry for compliance.



# STATISTICAL ANALYSIS OF HEARINGS

|                             | <u>1984</u> | <u>1985</u> | <u>1986</u> | <u>1987</u> | <u>1988</u> |
|-----------------------------|-------------|-------------|-------------|-------------|-------------|
| Appeals                     | 151         | 135         | 159         | 159         | 112         |
| Protests                    | 11          | 13          | 16          | 4           | 5           |
| Reappeals/Reconsideration   | 0           | 4           | 2           | 4           | 5           |
| Violations                  | 126         | 157         | 172         | 249         | 253         |
| Investigatory Hearings      | 3           | 13          | 0           | 3           | 5           |
| Remands from Superior Court | 2           | 0           | 1           | 1           | 4           |
| Disputed Liquor Bills       | 1           | 4           | 0           | 0           | 1           |
| Tax Protests                | 16          | 2           | 0           | 8           | 6           |
| Public Regulatory Hearings  | 1           | 9           | 0           | 0           | 1           |
| Section 25E cases*          | 0           | 13          | 12          | 16          | 16          |
| Pre-Trial Conferences       | 0           | 23          | 19          | 17          | 21          |
|                             | <hr/>       |             |             |             |             |
| TOTALS:                     | 311         | 373         | 381         | 461         | 429         |

\*25E cases are hearings concerning disputes between manufacturers and wholesalers. Previously they were listed under "Violations".

Cases arising under Section 25E of Chapter 138 have required significant Commission attention. Section 25E provides that where a supplier has made regular sales of a product to a Massachusetts wholesaler over a six-month period, the supplier cannot discontinue such sales without good cause. Competitive pressures and increased merger and acquisition activity in the industry have generated a substantial caseload in this area.

The Commission has been repeatedly faced with the question of whether 25E provides a remedy for a wholesaler where its supplier loses or transfers its distribution rights for a product and the new supplier is unwilling to serve the wholesaler.

In October 1985, the Commission ruled, in Kelly-Dietrich et al v Austin-Nichols Company, Inc. and Heublein Inc., that the acquiring supplier was obligated to sell to the wholesaler. The Commission held that the right to sell the product carried with

it the Section 25E obligations of the prior distributor. The Commission's view was that if producers and suppliers could exempt themselves from the requirements of the statute simply by assigning distribution rights to another entity, the intent of the statute would be easily defeated.

However, in 1988, the Supreme Judicial Court, in Pastene Wine & Spirits Co. v ABCC, 401 Mass. 612 (1988), upheld a pre 1985 Commission ruling that a supplier acquiring distribution rights pursuant to a bona fide corporate acquisition was not obligated to serve the former distributor's customers. The Pastene decision resulted in a number of new cases being filed. The Commission also agreed to the remand of several cases decided under the Austin-Nichols rule which were then pending on appeal. In addition to the number of cases, their complexity was increased by the need for evidentiary findings on issues (such as whether the transfer was accomplished with the intent of evading 25E) avoided by the "bright line" rule of Austin-Nichols.



## PUBLIC POLICY

In carrying out its responsibilities, an important function of the ABCC is identifying and implementing policies which protect the safety and interests of consumers and the general public and stabilize the liquor industry in Massachusetts.

The ABCC and its staff have developed and maintained a close working relationship with other governmental units, namely, the Executive Office of Public Safety, the Registry of Motor Vehicles, Governor's Highway Safety Committee, Department of Revenue, the Attorney General's Office and various other law enforcement and administrative agencies. The ABCC advised the Executive and Legislative Branches on matters relating to the liquor industry. They have participated in seminars and conferences to bring problems connected with the use and abuse of alcohol to the attention of licensed establishments, their employees and the general public.

The Commission has undertaken a program to invigorate the local licensing authorities by encouraging cities and towns to address their responsibilities in administering and enforcing the liquor laws.

## NEW DEVELOPMENTS

Excessive alcohol consumption aboard ships operating out of Massachusetts ports has become a matter of public concern. The ABCC held hearings as a result of incidents on specific ships and levied penalties on the licensed ships. It will propose regulations which deal with the sale and delivery of alcoholic beverages by ships' licensees.

Among liquor-related laws enacted was Chapter 85, signed by Governor Dukakis on June 23, 1988. This measure constitutes a key change in the Liquor Control Act by making it a crime for a person under 21 to "attempt to purchase" alcoholic beverages. Prior to this, an underage person had to be charged with the "purchase" of alcoholic beverages for prosecution to occur.

The Commission has received equipment and software and provided training to automate its data collection, word processing and license issuing functions. The Office of Management Information Systems is developing software to automate the issuance of liquor license and permits.

A decision of the Appeals Court (Board of Selectmen of Sudbury v ABCC, Appeals Court 87-357, decided on March 11, 1988), ended the practice of so-called "pocket licenses". Essentially it states that liquor licenses cannot be renewed at year's end if

applicant does not have existing premises on which to function. In past years, local licensing boards generally allowed renewals where no premises existed on the basis of the renewal affidavit and in some cases, the Commission allowed the licensee further time to arrange a sale and transfer. Although there may be exceptions, the Sudbury case will affect cities and towns and many licensees in 1989.

### TAX REVENUES

Since 1976, the ABCC has cooperated with the Massachusetts Department of Revenue in assisting in the collection of overdue taxes from licensees who attempt to transfer their licenses or interest in their businesses. Prior to approving such transfers, the Commission requires proof of tax compliance. The tax dollars collected under this program for the last five years are as follows:

Period Ending:

|                    |                       |
|--------------------|-----------------------|
| June 30, 1984..... | \$1,672,222.49        |
| June 30, 1985..... | \$1,824,418.89        |
| June 30, 1986..... | \$1,924,693.75        |
| June 30, 1987..... | \$1,593,980.83        |
| June 30, 1988..... | <u>\$1,442,560.16</u> |
| TOTAL:             | \$8,457,876.12        |

### FINES

Under the provisions of M.G.L. c 138, s23, when the ABCC suspends a license, the Commissioners at their discretion, may accept a fine in lieu of such suspension. The monies thus collected by the Commission are paid directly to the Treasurer and Receiver General.

The amount for the last five years is as follows:

Period Ending:

|                    |                     |
|--------------------|---------------------|
| June 30, 1984..... | \$201,672.06        |
| June 30, 1985..... | \$135,286.53        |
| June 30, 1986..... | \$233,543.44        |
| June 30, 1987..... | \$131,624.65        |
| June 30, 1988..... | <u>\$282,427.97</u> |
| TOTAL:             | \$984,554.65        |



# FINANCIAL STATEMENT

Fiscal Year--July 1, 1987 Ending June 30, 1988

|  | Number of Permits<br>Licenses/Fees<br>Issued | Amount       |
|--|--|--------------|
| Fines in Lieu of Suspension                | N/A  | \$282,428    |
| Manufacturer's License--Wineries           | 11   | 488          |
| Manufacturer's License--Breweries          | 2  | 9,000        |
| Wholesaler's & Importer's<br>All-Alcoholic | 61   | 305,000      |
| Wholesaler's & Importer's<br>Wines & Malt  | 42   | 104,500      |
| Wholesaler's & Importer's<br>Sacramental   | 3  | 4,000        |
| Certificate of Compliance (\$250)          | 277  | 70,500       |
| Certificate of Compliance (\$50)           | 646  | 31,050       |
| Special Permits                            | 214  | 2,677        |
| Commercial Alcohol License                 | 3  | 1,500        |
| Agents, Brokers & Solicitors               | 70   | 70,000       |
| Filing Fees                                | 2,492  | 62,300       |
| Storage Permit (Warehousemen)              | 23   | 2,400        |
| Storage Permit (Annual)                    | 27   | 5,500        |
| Storage Permit (Bonded Warehouse)          | 3  | 600          |
| Salesmen's Permit                          | 1,611  | 40,287       |
| Transportation Permit--Licensee            | 2,235  | 55,441       |
| Transportation Permit--Railroad            | 0  | 0            |
| Transportation Permit--Airline             | 1  | 300          |
| Transportation Permit--Steamship           | 0  | 0            |
| Railroad License--Master                   | 3  | 300          |
| Railroad License                           | 66   | 730          |
| Airline License                            | 483  | 4,830        |
| Steamship License                          | 103  | 15,450       |
| Express Permit                             | 4,003  | 60,038       |
| Ship Chandler's License                    | 5  | 1,250        |
| Miscellaneous Income                       | N/A  | 1,208        |
|  | 12,384                                       | \$1,131,777* |

\*This amount was transferred into the General Fund of the Commonwealth.

STATEMENT OF APPROPRIATIONS AND EXPENDITURES

APPROPRIATIONS:

|                    |             |
|--------------------|-------------|
| Personnel Services | \$1,320,746 |
| Expenses           | 148,559     |
|                    | <hr/>       |

EXPENDITURES:

|                    |             |
|--------------------|-------------|
| Personnel Services | \$1,317,660 |
| Expenses           | 143,493     |
| Accounts Payable   | 0           |
|                    | <hr/>       |

BALANCE UNEXPENDED:

|  |       |
|--|-------|
| Returned to Treasurer<br>and Receiver General: | 8,152 |
|  | <hr/> |